

International law

By Peter W. Rodino

ON the weekend that President Reagan vowed to uphold the Constitution for his second term in office, his administration decided to flout international law by walking out of the World Court proceedings in Nicaragua's suit against the United States government.

This action leaves the dual impression that the US dare not risk legal judgment of the mining of Nicaragua's harbors, and that our nation will pick and choose when we will play by the rules of international law.

Moreover, it represents a disconcerting insensitivity to this nation's historical commitment to the peaceful resolution of international disputes. Its legacy will be serious and longstanding damage to the United States' position as champion of the principle of law and order in international affairs.

The idea of an international court to resolve disputes among nations is as American as Theodore Roosevelt, whose secretary of state prevailed upon the Hague Peace Conference in 1907 to establish the first international judicial tribunal.

Strong support for an international tribunal continued under subsequent Presidents. "Every President since World War I has advocated the submission of international legal disputes to a judicial tribunal," said Attorney General William P. Rogers, in the Eisenhower administration.

US participation in an international tribunal took more definite shape in 1946 when President Truman, after a 60-to-2 ratification vote by the Senate, accepted the jurisdiction of the newly established World Court for specified international disputes involving the United States and any other nation that also agreed to automatic jurisdiction of the court.

The Senate Foreign Relations Committee report issued at the time noted that this step was endorsed by a bipartisan group that included Sens. Robert Taft and J. William Fulbright, the American Bar Association, and Secretary of States John Foster Dulles, who concluded, according to the report, that failure to accept the court's jurisdiction "would be interpreted as an election on our part to rely on power rather than on reason."

In the 39-year history of the World Court, only three other nations have ever walked out on a case, leaving the US in the very dubious company of Iran, Iceland, and Albania. Americans remember well the most celebrated defiance, when Iran's Ayatollah Khomeini ordered his lawyers to walk out of the suit initiated by the US during the American hostage crisis.

Today, however, the Reagan administration has turned the tables, setting an example that will vindicate the Ayatollah and anyone else wishing to spurn the rule of law.

In fact, the administration's withdrawal three days before Nicaragua filed suit violates the spirit — if not the letter — of the United States commitment to give six months' notice before withdrawing its consent to World Court jurisdiction. According to the 1946 Senate report, the six-month requirement serves as "a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding."

Notwithstanding our government's best arguments, in November of last year the International Court of Justice, by a 15-to-1 vote, determined that it did have jurisdiction over the dispute. The vote cannot be explained as a conspiracy of unfriendly nations. Among those who voted for the court's jurisdiction were jurists from a number of American allies.

Today 44 of 159 members of the United Nations have accepted the court's mandatory jurisdiction as a means of resolving international disputes. As one of the traditional leaders in this movement, the United States gained respect and credibility in the international community. All of that may have evaporated because of our response to the Nicaragua case.

Indeed, President Reagan's decision to mine the waters of international law may well haunt us in future years when the United States seeks the benefit of the World Court's adjudication — only to have an opposing nation walk out.

Adherence to the rule of law is a basic principle of the American system of government. We can only undermine our credibility by mocking that principle in the international arena. Whether right or wrong, our government will retain the confidence of the American people as long as it abides by the law.

Only a eleven years ago we prevented the unraveling of our system by a President who tried to place himself above the law. Let us hope that history will not record our withdrawal from the World Court as the first sign of a new arrogance of power.

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